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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/568,847

02/17/2006

Clive Anthony Payne

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07/21/2008

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,847	<b>Applicant(s)</b> PAYNE, CLIVE ANTHONY	
	<b>Examiner</b> VICTOR K. HWANG	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>02/17/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification lacks antecedent basis for the term "a limb support means" as recited in claims 1 and 2.
3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is not clear whether the recitation “at least one upright” in line 9 is the same as the recitation in line 1. If it is not the same, then it appears that the device will not function with one upright having a base portion, but the other does not. In line 11, the recitation “extending away from the base portion and the floor” is indefinite because using “the floor” as a reference point relies on an intended use of the apparatus. In line 12, the recitation “position distal from the base portion” is not clear as to what element is being referred to. Also in line 12, the recitation “the orientation of the arm portion” lacks proper antecedent basis.

In claim 2, the recitation “other limb” is vague and indefinite.

In claim 3, line 2, it is unclear whether “two spaced apart uprights” is referring to the “at least one upright” recited in claim 1. Additionally, the recitation “the two other limb supports” lacks proper antecedent basis.

In claims 4 and 5, it is unclear which elements of the invention “at least two additional limb supports” is referring to.

In claim 6, line 2, the recitation “each additional limb support” lacks antecedent basis.

In claim 7, the recitation “the further limb support” lacks antecedent basis.

In claim 19, the recitation “each base portion” is confusing because it is not clear how many base portions are being referred to.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 and 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Licciard* (US Pat. 4,503,845) in view of *Perry, Jr.* (US Pat. 5,135,459). *Licciard* discloses in Fig. 1 an exercise device having uprights 30a,32a, a cross bar 10, a limb support means with leg support means 12,14 being centrally located on the cross bar, a base portion 20, and arm portion 16. Fig. 2 shows that the device can be rotated 90 degrees. *Licciard* does not disclose a hand grip means and a concave limb support means.

*Perry, Jr.* discloses a limb support means 20,120 (Figs. 3 and 11-12) having a concave limb support means 21',22' and a hand grip means 110 (Fig. 11a). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the limb support means of *Licciard* with concave limb support means and a handgrip means as taught by *Perry, Jr.*, in order to provide a comfortable engagement for the user.

With regard to claims 2 and 12, *Perry, Jr.* shows in Fig. 2, two other concave limb supports 21a,22a. With regard to claim 4, *Licciard* shows in Fig. 2, two additional limb supports 30,32 extending perpendicularly away from the cross bar and being positioned therebetween. With regard to claim 14, the recitation of having removable jointed cross bar and uprights are considered an obvious design choice since collapsing a device for transport or storage is well

known in the art. With regard to claim 15, *Licciardi* discloses arm portion 16 in Fig. 3. With regard to claim 19, Fig. 2 of *Licciardi* shows hand grips 22.

8. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Licciardi* (US Pat. 4,503,845) in view of *Perry, Jr.* (US Pat. 5,135,459) as applied to claim 2 above, and further in view of *Mojden* (US Pat. 4,620,701). *Licciardi* in view of *Perry, Jr.* discloses the invention as claimed except that *Licciardi* can be interpreted as lacking two additional limb supports. *Mojden* discloses an apparatus having two additional limb supports 12,14,66,68 (Figs. 1 and 6) being located along a cross bar. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cross bar of *Licciardi* in view of *Perry, Jr.* with two additional limb supports, since *Mojden* discloses additional limb supports for providing additional exercise options.

9. Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Licciardi* (US Pat. 4,503,845) in view of *Perry, Jr.* (US Pat. 5,135,459) and *Mojden* (US Pat. 4,620,701) as applied to claim 6 above, and further in view of *Huang* (US Pat. 5,695,436). *Licciardi* as modified by *Perry, Jr.* and *Mojden* discloses the invention as claimed, wherein a further limb support is fixed to the additional limb support (see Fig. 6 of *Mojden*), except for an adjustment means operative to vary the further limb support.

*Huang* discloses an adjustment means 3,41. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified limb support of *Licciardi* with an adjustment means as disclosed by *Huang*, in order to provide additional

support configurations for exercise and since adjustability, where desirable, is a modification that is within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954).

With regard to claim 8, the adjustment means of *Huang* provides 360 degrees of rotation. With regard to claim 10, the adjustment means comprises a plug 32 and socket with holes 41. With regard to claim 11, the modified *Licciardi* apparatus does not explicitly disclose the plug and socket having square cross section. However, the feature of having a different shape, for example a square shaped plug and socket is considered an obvious design preference since it appears that the modified *Licciardi* device would perform equally well with the square shaped plug and socket.

10. Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Licciardi* (US Pat. 4,503,845) in view of *Perry, Jr.* (US Pat. 5,135,459) as applied to claim 19 above, and further in view of *Huang et al.* (US Pat. 6,926,647 B1). *Licciardi* in view of *Perry, Jr.* discloses the invention as claimed except for adjustable hand grips. *Huang et al.* teaches a pair of adjustable hand grips 8 attached to the base portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the base portions of *Licciardi* in view of *Perry, Jr.* with a pair of adjustable hand grips as taught by *Huang et al.*, so that the user can perform different exercises using the same device.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Stillinger* (US Pat. 6,770,013), *Prager* (US Pat. 5,746,688), *Atwood* (US Pat. 6,203,473 and *Gazzolo* (US Pat. 6,695,754) disclose apparatus having structure relevant to the invention as claimed.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR K. HWANG whose telephone number is (571) 272-4976. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn H. Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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